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December 12, 2022

BY ECF and EMAIL

Hon. Mark W. Pedersen
United States Magistrate Judge
Western District of New York
100 State Street
Rochester, New York 14614
pedersen@nywd.uscourts.gov

Re: *Wishart v. Welkley et al.*, Case No. 19-cv-6189 (DGL) (MJP)

Your Honor,

We write as Plaintiff's counsel concerning Defendants' ongoing failure to produce electronically stored information (ESI). Prior to the November 28, 2022 telephone court conference, defense counsel Hillel Deutsch emailed the Court explaining that, "[a]pproximately a month ago," Mr. Deutsch had received a load file containing his clients' emails and he had "reviewed them over the course of about three weeks." Accordingly, Mr. Deutsch completed his review of the email ESI at least a week before the November 28 court conference. During the November 28 conference, Mr. Deutsch indicated that he would produce the responsive emails within a few days. When Defendants had still not produced ESI by December 2, 2022, we wrote Mr. Deutsch to ask when he intended to produce the responsive documents. Three days later, on December 5, 2022, Mr. Deutsch responded: "I previously requested the emails be produced. I have emailed IT and hope it will be done today." That was a week ago, and nothing has been produced. It has been two weeks since the last court conference when Mr. Deutsch said the documents would be produced in a matter of days, but we still have not received any ESI discovery from Defendants.

As we write this, it has been just shy of three years since Your Honor first directed Defendants to produce relevant ESI. More than a year-and-a-half ago, Your Honor ordered Defendants to comply "forthwith" with the Court's January 29, 2021 Decision and Order directing Defendants to cooperate with third-party vendors to complete ESI discovery. As of today, Defendants have not produced a single page of ESI.

Respectfully,

Joshua S. Moskowitz (HAMILTON CLARKE, LLP)
Rob Rickner (RICKNER PLLC)

cc: All Counsel of Record (by ECF)